

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.GIRI

THURSDAY, THE 13TH DECEMBER 2007 / 22ND AGRAHAYANA 1929

WP(C).No. 29617 of 2006(A)

PETITIONER:

1. AZAD ABDULKALAM, S/O. I.NASSIMUDEEN,
ZAM ZAM HOUSE, CHERIYAVELINALLOOR P.O.,
KOLLAM DISTRICT.
2. SYJU K. PAUL, S/O. K.P.POULOSE,
KALIYAMPURATHU HOUSE, PIRAVOM P.O.,
ERNAKULAM DISTRICT.
3. ANISH JOY, S/O. J.JOY,
CHALILPOIKA HOUSE, KANJIRACODE,
MULAVANA P.O., KOLLAM DISTRICT.
4. PRASANTH R., S/O. P.RAJENDRAN NAIR,
PRANAVAM, ERUMODU, ARYANAD P.O.,
THIRUVANANTHAPURAM.
5. ZIAULHUQ S., S/O. N.M.SUBAIR,
T.C.39/2089, CHALAI P.O., FNA 35,
THIRUVANANTHAPURAM DISTRICT.
6. FAISI M.S., S/O. A.MOHAMMED ISMAIL,
FAISI MANDIRAM, THADICADU P.O.,
ANCHAL, KOLLAM DISTRICT.

BY ADV. SRI.KALEESWARAM RAJ

RESPONDENTS:

1. STATE OF KERALA, REPRESENTED BY
SECRETARY, DEPARTMENT OF HOME AFFAIRS,
SECRETARIAT, THIRUVANANTHAPURAM.
2. THE DIRECTOR GENERAL OF POLICE,
POLICE HEADQUARTERS, THIRUVANANTHAPURAM.
3. KERALA PUBLIC SERVICE COMMISSION,
REPRESENTED BY THE SECRETARY,
KERALA PUBLIC SERVICE COMMISSION,
PATTOM, THIRUVANANTHAPURAM.

R1 & 2 BY GOVT. PLEADER SHRI. P. NANDAKUMAR
R3 BY ADV. SRI.ALEXANDER THOMAS,SC,KPSC

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 13/12/2007, ALONG WITH WPC NO. 19613/07 & CONNECTED
CASES, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX IN W.P(C) 29617/06

PETITIONER'S EXTS:

EXT.P1: TRUE COPY OF THE RANKED LIST WHICH CAME INTO FORCE ON 9.8.2006

EXT.P2: -DO- OF THE LETTER DT. 13.10.2006 ISSUED BY STATE PUBLIC
INFORMATION OFFICER, POLICE DEPARTMENT

EXT.P3: -DO- OF THE RELEVANT PAGES OF THE DETAILS OF GOVT. OFFICERS IN
THE PUBLIC DEPARTMENT PUBLISHED IN APPENDIX IA

EXT.P4: -DO- OF THE REPLY DT. 26.10.2006

EXT.P5: -DO- OF THE REPLY DT. 27.10.2006

EXT.P6: -DO- OF THE REPLY DT. 4.10.2006

jj

/TRUE COPY/

P.S. TO JUDGE

V.GIRI, J.

**W.P.(C).Nos.29617 of 2006,
5789, 6557, 18336, 18624, 19613,
27903, 28385, 28873, 29653, 30032
& 30930 of 2007**

Dated this the 13th day of December, 2007.

JUDGMENT

Common issues arise for consideration in these writ petitions and they have been heard together and are being disposed of by this common judgment. W.P.(C) Nos.18336/06 and 18624/07 are taken as the leading cases.

2. The petitioners in all these cases are included in the rank list published by the Public Service Commission for the post of Sub Inspector of Police (General Executive Branch) (Trainee). The said rank list Ext.P1 in W.P.(C) No.18624/07 was published on 19.8.2006. Since the post in question is one to which appointment is preceded by a mandatory training course, the rank list has validity of one year from the date of its finalisation or one month from the date of commencement of the training of the last batch selected from the list within the said period of one year, whichever is later, in terms of the first proviso to Rule 13 of

the Kerala Public Service Commission Rules. Thus, the one year period of validity insofar as the rank list is concerned should normally expire on 18.8.2007. But, if any batch of trainees are reported for training within 18.8.2007, the rank list will remain valid for a period of one month from the commencement of the training of the last batch advised within the period of one year. The last batch was advised for training on 2.7.2007 and 23.7.2007. These batches so advised were sent for training on 19.9.2007. Accordingly, in terms of the first proviso, the rank list was to expire on 18.10.2007. A contention has been raised by one of the petitioners that the rank list does not expire on 18.10.2007 on the premise that even as on date one batch of candidates who were advised before 18.08.2007 have not commenced training. I will refer to this contention at a later point of time. Suffice it to say that, 16 candidates were advised on 21.8.2007 and 5 candidates on 6.11.2007. Their training is to commence on 1.1.2008.

3. The method of appointment for the post in question is contained in Government Order G.O.(P) No.196/95 dated 26.7.95. The said order (Special Rules) provides that 50% of the vacancies in the post of Sub

Inspector of Police (General Executive Branch) (Trainee) is to be filled up by promotion from among Assistant Sub Inspectors and 50% by direct recruitment. We are concerned with direct recruitment in these cases and insofar as 50% of the vacancies by direct recruitment are concerned, Special Rules provide for three categories, constituting three separate streams for direct recruitment. Category (1) is from the open market and 80% out of the 50% set apart for direct recruitment will have to be filled up by the candidates from the open category. Category (2) consists of the Ministerial Staff of Police, Vigilance Department, Finger Print Experts of the Finger Print Bureau and 10% of 50% of the total cadre strength is available thereunder. Category (3) comprises of Graduate Police Constables, Head Constables and Officers of corresponding rank in the Police Department. The remaining 10% of the 50% is available for the said category. The Special Rules further provide that out of the vacancies set apart for direct recruitment, first eight vacancies will be filled up from open market and 9th and 29th from the Ministerial staff and 10th, 20th and 30th from the Police Constable category (2). The Special Rules further provide that if sufficient number of

candidates from ministerial staff are not available, the vacancies for ministerial staff will be filled up by Graduate Policemen, subject to availability.

4. The writ petitions were filed by persons included in the rank list on the premise that the vacancies which were available as on the date of publication of the rank list and the vacancies which arose during the currency of the rank list have not been reported in their entirety to the Public Service Commission. It was also contended that the vacancies in the post in question as are presently available from the special units should also be treated as part of the cadre strength of the post. The further contention raised by the petitioners was that several police stations were sanctioned just before the publication of the list, but after the publication of the notification. Reference is also made in the writ petitions to sanctioning of the posts in Marine Units. There are certain figures as regards cadre strength of the post and the existing strength which may be treated as admitted on both sides. I will refer to the individual contentions as to the manner in which those vacancies will have to be treated for the purpose of operation of the rank list at the appropriate stage.

5. The cadre strength in the post in question [General Executive] as on 1.10.2007 is 1010. Apart from the same, there are 367 posts of Sub Inspectors in the Special Units viz., Police Headquarters, Vigilance and Anti-corruption Bureau, Special Branch CID, Crime Branch CID, Kerala Police Academy, State Crime Records Bureau and Railway Police. Apart from this, 12 posts were sanctioned for the Marine Units and therefore, the cadre strength for the post in question should be calculated as :

$$1010 + 367 + 12 = 1389.$$

6. As I noted above, there is a dispute as to whether the vacancies in the Special Units are liable to be treated as part of the Cadre strength of the post in question viz., Sub Inspector of Police (General Executive Branch) (Trainee) or whether they could be treated as separate units and therefore available to be filled up not only by direct recruitment, but also on transfer from Armed Police Battalion and the District Armed Reserve. This is the contention taken up by the learned Government Pleader.

7. The petitioners contend that collectively there is no difference in the nature of the duties carried on by the Sub Inspectors of Police in the General Executive Branch

and other specialised units. There are no rules statutory or otherwise, which provides for treating the special units as a separate service or a separate cadre altogether. Persons who were directly recruited as Sub Inspector of Police (General Executive Branch) have been posted to the Special Units. In the circumstances, according to them, 367 posts in the special units will have to be treated as part of the cadre strength. As mentioned above, there is a dispute about this. I will, therefore, address this issue at a later stage.

8. As noted above, the rank list was published on 19.8.2006. The following vacancies were reported subsequent to the publication of the rank list.

75 vacancies	26.10.2006
155 vacancies	04.12.2006
7 vacancies	28.03.2007
8 vacancies	25.06.2007

9. Thus, subsequent to the publication of the rank list and by 25.06.2007, 245 vacancies were reported by the Department.

10. Apart from the above, 49 vacancies were reported on 29.06.2007, apparently, as vacancies

anticipated to arise during 2008, as is contended by the learned Government Pleader. In fact, the specific contention taken in the counter affidavit is that the 49 vacancies reported on 29.06.2007 are vacancies which are anticipated to arise in 2008. Apart from the above, pursuant to an order passed by the Division Bench on 17.8.2007 in W.A.No.2038/07, the department reported 30 vacancies on 18.8.2007. Pursuant to an interim order passed in this case on 16.7.2007, another 30 vacancies were also reported by 18.10.2007, the date of expiry of the rank list.

11. The above is, therefore, the admitted factual position. The contention of the petitioners can be briefly summarised as follows:

12. Though the cadre strength of the post is stated to be 1010 by the Department, the same does not take into account the number of posts in the special units, as mentioned above. There are 367 posts of Sub Inspector of Police (General Executive Branch) in the Special Units. Those 367 are to be taken as part of the cadre strength. Apart from the same, 12 posts were sanctioned for 12 Marine Units and those will also have to be taken as part of

the cadre strength. It is further contended that 49 vacancies have been reported as vacancies anticipated for 2008 and those will have to be filled up by persons advised from the rank list.

13. Learned Government Pleader contended that the posts in the Special Units will have to be treated as a separate cadre and therefore, it cannot be part of the cadre strength for the post of Sub Inspector of Police (General Executive Branch). It is also contended that insofar as 49 vacancies which have been reported as anticipated vacancies for 2008 are concerned, it is up to the Public Service Commission to take suitable action in relation to the said vacancies. The break up has been given in Ext.R2(b). Ext.R2(b) is an intimation of the Director General of Police to the Public Service Commission on 18.08.2007 given as per the directions of this court, pursuant to the interim order dated 14.08.2007. The said anticipated vacancies for 2008 were reported on 29.06.2007.

14. The first question to be considered is whether the rank list has expired and if so when? As noted above, the rank list was published on 19.08.2006 and one year

from the finalisation of the rank list will expire on 18.08.2007. This should normally be the period of the rank list. But since the post in question is one where a training course leads to automatic appointment and the training is mandatory, if during the aforementioned period of one year a batch is selected for training and the said batch does not commence its training, then the period of rank list will stand extended to one month from the date of commencement of the training in respect of the last batch so selected within the period of one year. Going by Ext.R2 (b) and the submission made by the learned Government Pleader, the last batch which was selected for training prior to 18.08.2007 i.e. One year from the date of publication of the rank list were so selected on 02.07.2007 and 23.07.2007. Apparently, those persons commenced therein training on 19.09.2007. If this be the position, the rank list will expire on 18.10.2007. This was the basis on which a detailed interim order came to be passed on 16.10.2007 wherein in para 2 of the said order, I had noted therein that it is admitted by the counsel as also by the learned Senior Government Pleader that the list is due to expire on 18.10.2007. Thus, going by the version contained in the

first and second counter affidavits and Ext.R2(b) it has to be held that the rank list expired on 18.10.2007.

15. In the circumstances, the further question to be considered is what is the nature of the directions to be issued as regards the 30 vacancies reported pursuant to the direction issued by the Division Bench on 17.08.2007 in W.A.No.2038/07 and the further 30 vacancies which were reported on 18.10.2007 pursuant to this court's order dated 16.10.2007 in these Writ Petitions.

16. Learned counsel for the petitioners submit that suitable directions may also have to be issued in relation to the 49 anticipated vacancies which were reported for 2008 on 29.06.2007.

17. Insofar as the first contention that the 367 posts in the Special Units are also eligible to be treated as part of the cadre strength of the post in question, I have to take note of the fact that 132 persons in the Special Units are from the General Executive Branch and 165 are from the Armed Battalion on the District Armed Reserve. There is no order or rule which specifically authorises Sub Inspectors of Police in the District Armed Reserve or the Armed Police Battalion to be transferred to the Special

Units as such. There is also no order which clearly indicates that the Special Units are eligible to be treated as a separate cadre altogether. In the circumstances, there is substance in the contention raised by the learned counsel for the petitioners that the posts of Sub Inspector of Police in the Special Units as such are eligible to be treated as part of the cadre strength of the post in question. But, in view of the number of vacancies which were available as on 01.10.2007 and the number of vacancies which were actually reported, I do not think it is necessary to finally pronounce on this aspect. At any rate, going by the main issues which arise for consideration in these writ petitions, the said issue is collateral and it may not be necessary to finally adjudicate upon the same. I am proceeding on the premise that the 367 posts in the Special Units are eligible to be treated as Part of the cadre strength of the post in question. Accordingly, the cadre strength for the post will have to be treated as $1010 + 367 + 12 = 1389$. As per the Special Rules, 50% of the cadre strength will have to be filled up by direct recruitment and therefore, the number of vacancies available to be filled up by direct recruitment is 695.

18. In the second counter affidavit dated 15.10.2007, it is stated that the existing strength of direct recruit-Sub Inspectors of Police as on 01.10.2007 is 455. The total number of vacancies which were reported on various dates after the publication of the rank list till 25.06.2007 (excluding the 49 anticipated vacancies for the year 2008) are 245. Therefore, taking note of the existing strength as on 1.10.2007 and the vacancies reported as on 25.06.2007, 701 candidates who are direct recruits are either working in the branch or have been advised for training or in certain cases have just joined after completing their training. This is against the strength of 695 posts, available to direct recruits in the post of Sub Inspector of Police (General Executive Branch) (Trainee). In the circumstances, the further question to be considered is what is the direction that is required to be issued as regards the 30 vacancies which were reported on 08.08.2007 pursuant to the direction of the Division Bench and the further 30 vacancies which were reported on 18.10.2007 pursuant to this court's order dated 16.10.2007. I am of the view that since the number of direct recruits available as on 01.10.2007 is 701 and this is

in excess of the maximum number of posts available to direct recruits viz., 695, no direction can be issued for enforcement of the rank list as regards those sixty vacancies. I take note of the fact in assessing the existing strength of direct recruits in the General Executive Branch as 455, the 132 persons from the General Executive Branch, who are working in the Special units are not considered, notwithstanding the fact that the entire number of 367 posts in the Special Units have been taken into account for the purpose of determining the cadre strength of the post in question. In the circumstances, it is not open to the petitioners to seek a direction that the 60 vacancies which were reported during the pendency of the rank list pursuant to the orders of this court should also be filled up from the list.

19. While directing that the vacancies be reported pending further orders from this court, it was made clear that the Public Service Commission shall not advise any candidates against the said vacancies, I also made it clear that the reporting of the vacancies should be treated as provisional. In other words, the requisition made in relation to the said vacancies are subject to the orders to be passed

by this court. For the reasons mentioned above, taking note of the fact that total number of direct recruits working in the General Executive Branch taken along with the number of vacancies which were reported as 23.06.2007 are in excess of the strength that could be sanctioned for direct recruits as such, the said 60 vacancies which have been reported pursuant to the orders of this court should not be acted upon by the Public Service Commission. The requisition made in relation to the 60 vacancies should be cancelled. Appropriate orders may be passed in this regard by the 2nd respondent.

20. This takes me to the 49 anticipated vacancies for the year 2008. The said vacancies were reported on 29.06.2007. The date of occurrence of the vacancies are given in Ext.R2(b). Since those vacancies are not reported pursuant to the orders of this court in these writ petitions, the Public Service Commission has not joined issue as to whether those vacancies are to be treated as vacancies reported in terms of Rule 14 of the KPSC Rules, I do not think it necessary to pass any orders as regards those 49 vacancies in these writ petitions. The said issue is left open.

W.P. (C) .NO.18336/07 & Con.cases.

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21. It is made clear that the 245 vacancies which were reported on several dates ending with 25.06.2007 shall be treated as vacancies validly reported during the currency of the rank list and they shall be filled up by eligible persons advised from the rank list in question.

No other point has been raised in the writ petition. The writ petitions are disposed of in the above manner.

Sd/-

(V.GIRI)
JUDGE

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